

REDACTED

BEFORE THE
BOARD OF MEDICAL QUALITY ASSURANCE
DIVISION OF MEDICAL QUALITY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

OFFICE OF
ADMIN. HEARINGS
COMPL RESP EXHIBIT
AGENCY
FILE NO.
DATE

2

In the Matter of the Accusation
Against:

RICHARD E. AGEE, M.D.
802 Beaumont Avenue
Beaumont, California 92223

License No. C 23910

Respondent.

NO. D-2311

L-19096


DECISION

The attached Proposed Decision of the Administrative Law
Judge is hereby adopted by the Board of Medical Quality Assurance
Division of Medical Quality as its Decision in the
above-entitled matter.

This Decision shall become effective on October 15, 1981.

IT IS SO ORDERED September 15, 1981.

BOARD OF MEDICAL QUALITY ASSURANCE
DIVISION OF MEDICAL QUALITY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA


MILLER MEDEARIS, Secretary-Treasurer

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BEFORE THE
BOARD OF MEDICAL QUALITY ASSURANCE
DIVISION OF MEDICAL QUALITY
DEPARTMENT OF CONSUMER AFFAIRS
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In the Matter of the Accusation)	
Against:)	
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RICHARD E. AGEE, M.D.)	NO. D-2311
802 Beaumont Avenue)	
Beaumont, California 92223)	L-19096
)	
License No. C 23910)	
)	
Respondent.)	
)	

PROPOSED DECISION

This matter came on regularly for hearing before Marilyn L. Nelson, Administrative Law Judge of the Office of Administrative Hearings, at San Bernardino, California, on November 3, 4, 5, 6, 7 and 13, 1980, and June 1, 2, 3 and 4, 1981. Complainant was represented by Alvin J. Korobkin, Deputy Attorney General. Respondent appeared in person and was represented by Rodney Walker, Attorney at Law.

Pursuant to stipulation of the parties, paragraphs 7, 8 and 12 of the Accusation were stricken.

Submission of the matter was deferred to allow respondent to file written argument and complainant to reply thereto. The argument of respondent was received on June 26, 1981, and marked as Exhibit O. Complainant's response was received on July 8, 1981, and is marked as Exhibit 24.

Oral and documentary evidence having been introduced and the matter submitted on July 9, 1981, the Administrative Law Judge finds the following facts:

I

Robert G. Rowland is the Executive Director of the Board of Medical Quality Assurance (hereinafter, the Board) and made and filed this Accusation in his official capacity.

II

Respondent Richard E. Agee, M.D., (hereinafter, respondent) has been issued License No. C-23910 by the Board, and

it is currently in full force and effect. Respondent's address of record with the Board is 802 Beaumont Avenue, Beaumont, California.

III

At all times pertinent herein, Seconal, Preludin, Biphedamine and Quaalude were dangerous drugs within the definition of Section 4211 of the Business and Professions Code and classified as Schedule II controlled substances by Division 10 of the Health and Safety Code.

IV

Respondent prescribed, dispensed or furnished substances which were dangerous drugs and Schedule II controlled substances without a good faith prior examination and medical indication therefor as follows:

SK [REDACTED] D [REDACTED]

5/03/78 - 60 Seconal
5/18/78 - 60 Seconal
 30 Biphedamine 20
7/11/78 - 30 Preludin 75
 60 Seconal 60
8/15/78 - 30 Preludin
 60 Seconal 1.5

N [REDACTED] S [REDACTED]

5/03/78 - 60 Seconal
5/18/78 - 60 Seconal 1.5 gr.
 30 Biphedamine 20
6/22/78 - 60 Seconal 1.5 gr.
 30 Biphedamine 20
8/03/78 - 60 Seconal 1.5 gr.
 30 Biphedamine 20
9/14/78 - 60 Seconal 1.5 gr.
 30 Biphedamine 20

G [REDACTED] M [REDACTED]

5/09/78 - 30 Biphedamine 20
5/31/78 - 30 Biphedamine 20

G [REDACTED] F [REDACTED]

6/06/78 - 60 Quaalude 300

V

During the pertinent times herein, overweight was one of the accepted medical indications for the use of the drugs Biphedamine and Preludin; anxiety, tension and sleeplessness were accepted medical indications for the use of the drugs Seconal and Quaalude.

VI

A. On the initial visit of each of the said four patients, respondent did not perform a reasonably adequate physical examination for prescribing of dangerous drugs or controlled substances, based upon the standard of care of the medical community of the State of California. He did have the patient fill out an extensive check sheet history, his nurse asked the reason for the visit and noted her interpretation of the patient's comments on the chart, and the nurse took the patient's blood pressure and weighed the patient. Respondent performed a limited cursory physical examination which generally consisted of visual observation of the patient and listening to the heart and lungs of the patient.

B. Because the examination on the initial visit was inadequate, the brief cursory examination which respondent performed on each of the subsequent visits was not adequate.

C. Respondent did not, on any of the visits of each of the patients, adequately explore with the patient the subjects of overweight, dietary habits, anxiety, tension, or sleeplessness, in order to establish medical indication for the use of drugs prescribed. Respondent had not previously treated any of the patients. In making these findings, it is recognized that respondent had a high volume of patients and could have reached hasty conclusions in making his diagnoses based upon misunderstandings in his communications with the patients. Each of said patients was acting as an undercover operative for the Board. Any such misunderstanding would not, however, excuse his conduct.

VII

In prescribing, dispensing or furnishing substances which were dangerous drugs and Schedule II controlled substances without a good faith prior examination and medical indication therefor, respondent has evinced incompetence - a lack of ability in discharging his professional medical obligations.

VIII

Respondent began his practice as a family practitioner in Beaumont in 1963 when he took over an established practice. In 1968 he was drafted into the United States Army and served one year in View Nam and one year at Presidio as a medical doctor. He then returned to his Beaumont practice. He is an elected board trustee of and is on the staff of the San Geronio Pass Memorial Hospital. Respondent has a very large practice, treating approximately 75 to 100 patients a day. Many of his patients are on Medi-Cal and Medicare. He has an excellent reputation in the community for his competence as a physician and as a community leader. He provides medical services for the Beaumont-Banning area, which includes Cherry Valley, Morengo Indian Reservation, Calimesa and Cabizon, in a depressed rural setting. By reason of the size

of his practice, the economic status of his patients, and the shortage of general practitioners in the area, respondent has at times had to compromise the quality of medical care he has provided. More doctors have recently started practicing in the area which will help relieve respondent's burden, but respondent's patients still provide the Pass Memorial Hospital with approximately one-third of its total revenue. Respondent has curtailed his Schedule II prescription writing since receiving new guidelines from the California Medical Association and the Board in January, 1981, and because of the institution of this disciplinary proceeding.

IX

The Medical Practice Act was revised by the 1980 statutes. Effective January, 1981, Sections 2360, 2361 and 2399.5 of the Business and Professions Code were renumbered as follows:

<u>Old Section</u>	<u>New Section</u>
2360	2220, 2221, 2230
2361	2234, 2235
2399.5	2242

Respondent's contention that such legislative action abrogates this proceeding is without merit.

X

It was not established that respondent was denied due process in that this matter was heard by an Administrative Law Judge of the Office of Administrative Hearings rather than a Medical Review Committee panel of peers.

XI

It was not established that the Board was politically motivated in bringing the within Accusation and thus contravened the constitutional rights of respondent.

XII

Respondent has not established that a standard of proof higher than a preponderance of the evidence is applicable to this proceeding.

XIII

All allegations in the Accusation which are not found to be true or which are not stricken are hereby found to be untrue.
~~All motions not ruled upon by this decision or during the hearing~~
are hereby deemed to be denied.

* * * * *

Pursuant to the foregoing findings of fact, the

Administrative Law Judge makes the following determination of issues:

Cause exists to discipline respondent's certificate pursuant to Sections 2360* and 2361** of the Business and Professions Code, as follows:

1. Respondent is guilty of unprofessional conduct within the meaning of Section 2399.5*** of the Business and Professions Code in that he prescribed, dispensed or furnished substances which are dangerous drugs or controlled substances without medical indication therefor.

2. Respondent is guilty of unprofessional conduct within the meaning of Section 2399.5*** of the Business and Professions Code in that he prescribed, dispensed or furnished substances which are dangerous drugs or controlled substances without medical indication therefor.

3. Respondent is guilty of unprofessional conduct within the meaning of Section 2361(d)** of the Business and Professions Code in that he has evinced incompetence.

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Physician and Surgeon Certificate No. C-23910 heretofore issued to Richard E. Agee, M.D. by the Board is hereby revoked as to Determination of Issues 1, 2 and 3, separately and severally; provided, however, that execution of this order of revocation is hereby stayed and respondent is placed on probation for five (5) years upon the following terms and conditions:

1. Within 60 days of the effective date of this decision, respondent shall submit to the Division for its prior approval, a clinical education program related to the violations found in the decision. The exact number of hours and the specific content of the program shall be determined by the Division or its designee and shall total not less than four nor more than twenty hours per week for a period of not less than three months nor more than two years. Respondent shall complete the clinical training program within two years and six months of the effective date of this decision.

2. Upon completion of the clinical training program, respondent shall take and pass an oral clinical examination to

*Effective January, 1981, Section 2360 of the Business and Professions Code was renumbered as Sections 2220, 2221, and 2230.

**Effective January, 1981, Section 2361 of the Business and Professions Code was renumbered as Sections 2234 and 2235.

***Effective January, 1981, Section 2399.5 of the Business and Professions Code was renumbered as Section 2242.

be administered by the Division or its designee. If respondent fails this examination, respondent must wait three months between re-examinations, except that after three failures respondent must wait one year to take each necessary re-examination thereafter. The Division shall pay the cost of the first examination and respondent shall pay the costs of any subsequent examinations.

3. Respondent shall not prescribe, administer, dispense, order or possess (except as prescribed, administered, or dispensed to respondent by another person authorized by law to do so) controlled substances as defined by the California Uniform Controlled Substances Act except for those drugs listed in Schedules IV and V of the Act. This restriction shall remain in effect until respondent has completed the clinical training program and passed the oral clinical examination to be administered by the Division or its designee, as set forth hereinabove in paragraphs 1 and 2.

4. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in California.

5. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation.

6. Respondent shall comply with the Division's probation surveillance program.

7. Respondent shall appear in person for interviews with the Division's medical consultant upon request at various intervals and with reasonable notice.

8. In the event respondent should leave California to reside or to practice outside the State, respondent must notify in writing the Division of the dates of departure and return. Period of residency or practice outside California will not apply to the reduction of this probationary period.

9. If respondent violates probation in any respect, the Division, after giving respondent notice and the opportunity to be heard, may set aside the stay order and impose the revocation of the respondent's certificate.

10. Upon successful completion of probation, respondent's certificate will be fully restored.

I hereby submit the foregoing which constitutes my Proposed Decision in the above-entitled matter, as a result of the hearing had before me on the above dates at San Bernardino, California, and recommend its

adoption as the decision of the
Board of Medical Quality
Assurance.

DATED: July 16, 1981

Marilyn L. Nelson

MARILYN L. NELSON
Administrative Law Judge
Office of Administrative Hearings

MLN:mh

REDACTED

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7 Attorneys for Complainant

8 BOARD OF MEDICAL QUALITY ASSURANCE

9 DIVISION OF MEDICAL QUALITY

10 DEPARTMENT OF CONSUMER AFFAIRS

11 STATE OF CALIFORNIA

12 In the Matter of the Accusation
13 Against:

NO. D-2311

14 RICHARD E. AGEE, M.D.
15 802 Beaumont Avenue
16 Beaumont, California 92223

ACCUSATION

17 License No. C 23910

Respondent.

18 COMES NOW your complainant, Robert G. Rowland, and as
19 cause for disciplinary action against the above-named and caption-
20 ed respondent, charges and alleges as follows:

21 1. He is the Executive Director of the Board of Medical
22 Quality Assurance (hereinafter, the Board) and makes and files
23 this Accusation in his official capacity as such and not other-
24 wise.

25 2. Respondent Richard E. Agee, M.D., (hereinafter, respon-
26 dent) has been issued License No. C-23910 by the Board, and it is
27 currently in full force and effect. Respondent's address of

1 record with the Board is 802 Beaumont Avenue, Beaumont, California
2 92223.

3 3. Sections 2360 and 2361 of the Business and Professions
4 Code (hereinafter, the Code), provide that any certificate may be
5 suspended or revoked if the holder is guilty of unprofessional
6 conduct.

7 4. Section 2399.5 of the Code provides that the pre-
8 scribing, dispensing, or furnishing dangerous drugs as defined in
9 section 4211 without a good faith prior examination and medical
10 indication therefor constitutes unprofessional conduct.

11 5. Respondent is subject to disciplinary action by
12 authority of sections 2360 and 2361 of the Code because he has
13 been guilty of unprofessional conduct within the meaning of
14 section 2399.5 of the Code in that he has dispensed or furnished
15 substances which are dangerous drugs as defined in section 4211
16 without a good faith prior examination and medical indication
17 therefor as follows:

18 ~~Sharon D. Delano~~

19 5/03/78 - 60 Seconal

20 5/18/78 - 30 Seconal
21 30 Bephetamine 20

22 7/11/78 - 30 Preludin 75
60 Seconal 60

23 8/15/78 - 30 Preludin
24 60 Seconal 1.5

25 ~~N. S.~~

26 5/03/78 - 60 Seconal

27 5/18/78 - 30 Seconal 1.5 gr.
30 Biphettamine 20

1 N. S. (Cont.)

2 6/22/78 - 60 Seconal 1.5 gr.
3 30 Biphedamine 20

4 8/03/78 - 60 Seconal 1.5 gr.
5 30 Biphedamine 20

6 9/14/78 - 60 Seconal 1.5 gr.
7 30 Biphedamine 20

8 G. M.

9 5/09/78 - 30 Biphedamine 20

10 5/31/78 - 30 Biphedamine 20

11 G. F.

12 6/06/78 - 60 Quaalude 300

13 6. The substances respondent furnished as described
14 hereinabove at paragraph 5 are not only dangerous drugs under
15 section 4211 of the Business and Professions Code but Seconal,
16 Preludin, Biphedamine and Quaalude are also Schedule II controlled
17 substances by division 10 of the Health and Safety Code.

18 7. Effective January 1, 1978, section 700 of the Business
19 and Professions Code provides that repeated acts of clearly ex-
20 cessive prescribing or administering of drugs as determined by
21 the local community of licensees is unprofessional conduct for
22 a licensed physician and surgeon. [Prior to January 1, 1978,
23 section 2361.5 of the Business and Professions Code provided that
24 the clearly excessive prescribing or administering of drugs as
25 determined by the customary practice and standards of the local
community of licensees is unprofessional conduct.]

26 8. Respondent is also guilty of unprofessional conduct,
27 and subject to discipline therefore, now pursuant to section 700
28 of the Code, because the matters set forth hereinabove at para-

WHEREFORE, complainant prays that the Division of Medical Quality hold a hearing on the allegations contained herein and, following said hearing, take such action as provided by sections 2361 and 2372 of the Business and Professions Code, or taking such other and further action as may be proper.

DATED: April 5, 1979

Robert G. Howland

ROBERT G. ROWLAND
Executive Director
Board of Medical Quality Assurance

Complainant